

PATENT

Docket No.: P-9986.00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Heruth Group Art Unit: 3767
Application No.: 10/698,124 Examiner: Elizabeth MacNeill
Filing Date: October 31, 2003 Conf. No.: 8969
Title: SENSING FOOD INTAKE

Declaration of Kenneth T. Heruth

I, Kenneth Heruth, hereby declare as follows:

1. I have received a Bachelor of Mechanical Engineering and a Master's of Science in Mechanical Engineering from the University of Minnesota.
2. I have worked in the area of medical devices for 33 years and have worked almost 25 years at Medtronic. My current title is Advanced Concepts Manager. My responsibilities include locating and developing new technologies to advance Neuromodulation therapies.
3. I have reviewed the March 28, 2007 Office Action and U.S. Patent No. 4,003,379 To Everett H. Ellinwood, Jr., as cited therein.
4. The disclosure in Ellinwood to monitoring the "gastrointestinal motility" of a patient is not the same as, and does not necessarily correlate to, the electrical activity of a patient's gastrointestinal tract. Rather, my invention monitors the electrical activity using sensors on or proximate to the esophagus, stomach, and intestine to determine the quantity of food consumed by the patient and to control delivery of treatment to the patient.

5. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: June 26, 2007

By: Kenneth T. Heruth

Kenneth T. Heruth